D.B. CIVIL WRIT PETITION NO.1150/2002

Dhariwas Indusries Ltd. & Anr. Vs. The State of Raj. & Ors.

Date : 14.9.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HONBLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. J.P. Joshi for the petitioner.
Mr. Sangeet Lodha for the respondents.

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Through this writ petition, the petitioner challenges the constitutional validity of Sections 3, 4 and Sections 2(c) and 2(i) of Rajasthan Tax on Luxuries (Tabacco and its products) Act, 1994 so far it relates to levy of luxuries tax on tabacco or specifically Gutakha.

The consequential relief about quashing of the impugned order imposing tax on Gutakha a product of Tabacco produced by the petitioner-company and notice of demand for the same have also been sought.

It has been brought to our notice that the impugned provisions have been held to be ultra vires by

this Court in D.B. Civil Writ Petition No.4226/2002 – M/s Dinesh Tobacco Industries Vs. State and two other petitions decided on 21st April, 2005. Taking into consideration the ratio laid down by the Supreme Court in Godfrey Phillips India Ltd. & Anr. Vs. State of U.P. & Ors; (2005)2 SCC 515 considering the like provisions in Uttar Pradesh Tax on Luxuries Act, 1995, the Andhra Pradesh Tax on Luxuries Act, 1997 and the West Bengal Tax on Luxuries Act, 1994, the enactment was held to be ultra vires the legislative competence to levy tax on Luxuries under Entry 62 of State list of 7th Schedule.

In view thereof, this petition must succeed. The order dated 22.12.2001 (Annex.2) and demand notice (Annex.3) are quashed.

However, the tax collected by the petitioner from its constituents and paid to the State shall not be refunded.

So far as the question of tax collected by the petitioner but not paid by the petitioner till now to the

State Government or the tax which have not been levied by the State Government but has been paid by the petitioner is concerned, the same shall be governed by the following directions issued by the Supreme Court in above referred decision in case of M/s Godfrey Phillips India Ltd.'s case:-

> "It was stated on behalf of the State Governments that after obtaining interim orders from this Court against recovery of luxury tax, the appellants continued to charge such tax from consumers/ customers. It is alleged that they did not pay such tax to the respective State Governments. It was,therefore, submitted that if the appellants are allowed to retain the amounts collected by them toward luxury tax from consumers, it would amount to "unjust enrichment" by them.
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> In our opinion, the submission is well founded and deserves to be upheld. If the appellants have collected any amount towards luxury tax from consumers/ customers after obtaining interim orders from this Court, they will pay the said amounts to the respective State Governments."

These directions shall govern the tax collection by the State from the petitioner until now.

The petition accordingly stands allowed. No order as to costs.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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